

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL D. RABIN

Appeal No. 1997-2048
Application No. 08/175,326¹

ON BRIEF

Before HAIRSTON, FLEMING, and DIXON, **Administrative Patent Judges**.
DIXON, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 and 3-10, which are all of the claims pending in this application.

We REVERSE.

¹ Application for patent filed December 29, 1993.

BACKGROUND

The appellant's invention relates to a voice command control and verification system which uses the spoken command as both the command recognition and as the identity verification. An understanding of the invention can be derived from a reading of exemplary claim 7, which is reproduced below.

7. A method of recognizing voice commands of authorized users of a system, the method comprising the steps of:

receiving a claim of identity from a person;

receiving an utterance of a system command from said person;

performing a speech recognition process on said utterance;

performing a speaker verification process on said utterance;

if said utterance is recognized as a command to said system and if said claimed identity is verified based on said utterance, providing a signal to said system indicating that a command has been presented by an authorized user for execution.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Dowden et al. (Dowden)	5,181,237	Jan. 19, 1993
Naik et al. (Naik '720)	5,216,720	Jun. 01, 1993
Green	5,274,695	Dec. 28, 1993
Picone et al. (Picone)	5,293,452	Mar. 08, 1994

(Filed Jul. 01, 1991)

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Naik, J.M., "SPEAKER VERIFICATION: A TUTORIAL," **IEEE COMMUNICATIONS MAGAZINE**, January 1990, pp 42-48.(Naik)

Claims 1 and 3-5 and 7-10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Naik '720 in view of Dowden and Picone. Claim 6 stands rejected under 35 U.S.C. § 103 as being unpatentable over Dowden in view of Green. Claims 1 and 3-10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Naik '720 in view of Naik, Dowden and Picone.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 12, mailed Aug. 29, 1996) and the supplemental examiner's answer (Paper No. 14, mailed Dec. 18, 1996) for the examiner's complete reasoning in support of the rejections, and to the appellant's brief (Paper No. 11, filed Jul. 11, 1996) and reply brief (Paper No. 13, filed Nov. 4, 1996) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the

respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

As pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the claim." **In re Hiniker Co.**, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). We find that the examiner has not provided a teaching or convincing line of reasoning why one skilled in the art would have desired to use the command as the signal for both command recognition and speaker identity verification as set forth in the language of claim 7.

"To reject claims in an application under section 103, an examiner must show an un rebutted ***prima facie*** case of obviousness. **See In re Deuel**, 51 F.3d 1552, 1557, 34 USPQ2d 1210, 1214 (Fed. Cir. 1995). In the absence of a proper ***prima facie*** case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent. **See In re Oetiker**, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). On appeal to the Board, an applicant can overcome a rejection by showing insufficient evidence of ***prima facie*** obviousness or by rebutting the ***prima facie*** case with evidence of secondary indicia of nonobviousness." **In re Rouffet**, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1455 (Fed. Cir. 1998). Here, we find that appellant has overcome the ***prima facie*** case of obviousness by showing insufficient evidence by the examiner of obviousness. Therefore, we will not sustain the rejection of claim 7, nor its similar independent claims 1, 3, 4, and 6. Nor will we sustain the rejection of dependent claims 5 and 8-10.

Appellant argues the examiner has not provided a teaching or convincing line of reasoning why it would have been obvious to one of ordinary skill in the art at the time of the invention to use the input command as both the command recognition and the identity verification. (See brief at page 4 et seq.) We agree with appellant. Appellant argues that Naik '720 is concerned with access security and is not concerned with command recognition while Dowden is concerned with command recognition and not security in accessing the system. (See brief at pages 5-6.) We agree with appellant. Appellant argues that the examiner has not provided a convincing line of reasoning or motivation to combine the parts of the claimed invention which the examiner has assembled. **Id.** We agree with appellant. Appellant argues that the skilled artisan would not have been able to make the invention as claimed from the applied references "without hindsight knowledge of the claimed invention." (See brief at page 7.) We agree with appellant.

The examiner argues that:

[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to forego the use of a secret phrase (and thereby forego one level of security) and utilize the system commands (as taught by Dowden) as the phrase to be processed in the voice verification

system because such a modification would permit the user to access the system in a faster, easier manner (no password required prior to entering a system command) while still maintaining security by verifying the identity of the purported user.

(See answer at page 8.) The examiner continues to state that “[t]he reference speech sample is arbitrary -- to utilize a system command would be an obvious choice and one motivation for doing so is to make the system more user friendly.” (See answer at pages 9-10.) Furthermore, “[t]he examiner maintains that to use said verbally entered commands as the word or phrase to be used in the verification process would have been obvious at the time the invention was made.” (See supplemental answer at page 3.) The examiner maintains that the “[i]ssue is whether or not use of system commands as the word or phrase to be recognized is obvious in light of the prior art.” (See supplemental answer at page 4.) We agree with the examiner that sample selection for use in the verification is arbitrary, but disagree with the examiner that the prior art applied against the claims teaches or would have suggested the use of the system command as both the command and the voice sample for user verification. We find that each of the prior art references applied against the claims teaches separate portions of the claimed invention, but the examiner has not provided a convincing line of reasoning for the combination and modification to the prior art references beyond the above cited conclusion for the combination of teachings achieving the invention as set forth in the language of claim 7. Therefore, we will not sustain the rejection of claim 7, nor the other independent claims 1, 3, 4, and 6. Nor will we sustain the rejection of dependent claims 5 and 8-10.

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CONCLUSION

To summarize, the decision of the examiner to reject claims 1 and 3-10 under 35 U.S.C. § 103 is reversed.

REVERSED

KENNETH W. HAIRSTON
Administrative Patent Judge

MICHAEL R. FLEMING
Administrative Patent Judge

JOSEPH L. DIXON
Administrative Patent Judge

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